

63301-5

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NO. 63301-5-I

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

GARY H. COOPER, JR.,

Appellant.

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BRIEF OF RESPONDENT

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**TABLE OF CONTENTS**

I. ISSUE ..... 1

II. STATEMENT OF THE CASE..... 1

III. ARGUMENT..... 3

IV. CONCLUSION..... 4

**TABLE OF AUTHORITIES**

**WASHINGTON CASES**

State v. Patton, 167 Wn.2d 379, 219 P.3d 651 (2009)..... 4

## **I. ISSUE**

Where the defendant was handcuffed and in the back of a patrol car when he was arrested based on a warrant, was a search of his vehicle incident to his arrest unconstitutional?

## **II. STATEMENT OF THE CASE**

On January 4, 2009, an officer saw defendant's vehicle, a white van without a license plate, near an apartment complex. The officer was on the lookout for this vehicle based on an alert from a detective in the Bothell Police Department that he had probable cause to arrest defendant 3/6 RP 9-10. The officer found defendant in the driver's seat of the van. Defendant gave his name and date of birth to the officer. The officer determined that defendant had an outstanding misdemeanor arrest warrant from Tacoma. 3/6 RP 11, 13.

While the officer was checking on the status of the warrant, another officer arrived. 3/6 RP 14. The first officer told the second officer to detain defendant. 3/6 RP 15. The second officer removed defendant from his vehicle, handcuffed him, patted him down for weapons, and secured him in the back of his patrol vehicle. 3/6 RP 32.

The first officer received permission from his supervisor to take defendant to Tacoma based on the warrant. 3/6 RP 15. The second officer took defendant out of his patrol car, did a complete search of his person, and informed him he was under arrest. 3/6 RP 34.

Immediately after the arrest, the first officer contacted the Bothell detective to determine if there was still probable cause to arrest defendant. The detective informed the officer that he had already arrested defendant based on the probable cause that was the basis for the alert, but the detective had developed probable cause to arrest defendant for other crimes. The officer then searched defendant's vehicle and found drug paraphernalia and two pieces of identification that did not belong to defendant. 3/6 RP 17-18. The officer arrested defendant and booked him for possession of stolen property. 3/6 RP 19.

Before trial, defendant moved to suppress the evidence based on an illegal search. Defendant argued that he was secured in the patrol car and in handcuffs when he was arrested. He posed no threat to the officers and had no access to the interior of his vehicle. CP 82, 3/6 RP 46-48.

The State responded that since defendant was in his vehicle immediately before he was arrested, and was within 20 feet of the vehicle when the vehicle was searched, the search was incident to arrest and valid. CP 81, 3/6 RP 52-53.

The court denied defendant's motion ruling:

C. The time period from which the defendant was contacted, detained, and the warrant was confirmed was done in proximity of the vehicle the defendant was found in, and was completed within a limited period of time;

\* \* \*

F. Based on the totality of the facts presented to the court, the defendant was physically proximate to the passenger compartment of the above vehicle at the time of his lawful arrest.

CP 21.

Defendant was convicted on stipulated facts of second degree possession of stolen property. CP 5, 3/11 RP 7. The court sentenced defendant to a standard range sentence. CP 7, 10, 3/11 RP 10.

### **III. ARGUMENT**

The Supreme Court recently held:

[A]n automobile search incident to arrest is not justified unless the arrestee is within reaching distance of the passenger compartment at the time of the search, and the search is necessary for officer

safety or to secure evidence of the crime of arrest that could be concealed or destroyed.

State v. Patton, 167 Wn.2d 379, 383, 219 P.3d 651 (2009).

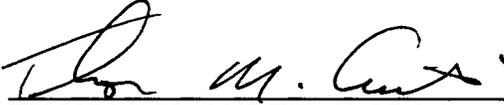
Under the facts of this case, the search of defendant's vehicle was not "justified." The judgment and sentence must be reversed. Since all evidence indicative of guilt was found during that search, the information must be dismissed.

#### IV. CONCLUSION

The judgment and sentence must be reversed. The case should be remanded to the Snohomish County Superior Court for dismissal of the information.

Respectfully submitted on January 4, 2010.

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